

James W. McConkie (2156)  
Bradley H. Parker (2519)  
W. Alexander Evans (12085)  
PARKER & MCCONKIE  
5664 South Green Street  
Salt Lake City, Utah 84123  
Telephone: (801) 264-1950  
Facsimile: (801) 266-1338  
jwmcconkie@utahlawhelp.com  
bparker@utahlawhelp.com  
alex@sjatty.com

*Attorneys for Plaintiffs*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF UTAH**

---

JILL McCLUSKEY and MATTHEW  
McCLUSKEY, individually and for and on  
behalf of LAUREN McCLUSKEY, deceased,

Plaintiffs,

v.

STATE OF UTAH (including the University  
of Utah, University Department of Housing  
and Residential Education and University  
Department of Public Safety), DALE  
BROPHY, KORY NEWBOLD, KAYLA  
DALLOF, MIGUEL DERAS, TODD  
JUSTENSEN, HEATHER McCARTHY,  
EMILY THOMPSON and JANE/JOHN  
DOES 1-10.

Defendants.

**MOTION AND MEMORANDUM  
IN SUPPORT OF MOTION FOR  
LEAVE TO FILE OVERLENGTH  
MEMORANDUM OPPOSING  
DEFENDANTS' MOTION  
TO DISMISS**

Case No. 2:19-cv-00449-HCN-PMW

District Judge: Howard C. Nielson, Jr.

Chief Magistrate Judge: Paul M. Warner

---

Plaintiffs, by and through their counsel, James W. McConkie, Bradley H. Parker and W.

Alexander Evans at the law firm of Parker & McConkie, pursuant to DUCiv R 7-1(e), hereby

submit this Motion and Memorandum in Support of Motion for Leave to File Overlength Memorandum Opposing Defendants' Motion to Dismiss.

**RELIEF REQUESTED**

Plaintiffs respectfully request that the Court grant them leave to file an overlength memorandum opposing Defendants' Motion to Dismiss that exceeds the customary page limit of 25 pages and contains an estimated additional 21 pages on the ground that good cause and exceptional circumstances justify the need for the specified extension.

**STATEMENT OF FACTS**

1. On September 20, 2019, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, seeking to dismiss all of Plaintiffs' claims on multiple grounds, including but not limited to qualified immunity.

2. On September 18, 2019, this Court signed an Order Granting Defendants' Motion for Leave to File Overlength Motion to Dismiss, allowing Defendants to file a motion that exceeded the customary 25 page limit by 7 pages.

3. Plaintiffs Memorandum Opposing Defendants' Motion to Dismiss is due on November 25, 2019.

**LEGAL ARGUMENT**

Under DUCiv Rule 7-1(e), this Court may approve a request to file a memorandum that exceeds the customary page limits "for good cause and a showing of exceptional circumstances." In this case, Defendants' Motion to Dismiss seeks dismissal with respect to *all* of Plaintiffs' claims and requires a detailed analysis with regard to complex issues involving both Title IX and the right to equal protection under the Fourteenth Amendment, including complex issues that

require a fact intensive analysis and that relate to individual liability, supervisory liability, municipal liability and qualified immunity. Some of the issues may involve matters of first impression and each legal and factual issue must be addressed with respect to eight separate defendants. The arguments necessary to respond to Defendants' Motion to Dismiss cannot be adequately articulated within the page limits established by the local rules and this Court will benefit from the complete analysis that can be provided in a longer brief. Indeed, Defendants needed a longer brief to articulate their arguments and Plaintiffs likewise need a longer brief to respond to those arguments. While Plaintiffs are in the final stages of drafting their opposition to the Motion to Dismiss, and while the final draft may ultimately be shorter, Plaintiffs estimate that they will need a total of 46 pages to provide an adequate response.

#### CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Leave to File Overlength Memorandum Opposing Defendants' Motion to Dismiss, thereby allowing Plaintiffs to file a memorandum that exceeds the customary 25 page limit by 21 pages. This Motion is accompanied by a proposed Order Granting Plaintiffs' Motion for Leave to File Overlength Memorandum Opposing Defendants' Motion to Dismiss, which has been filed herewith.

DATED this 21st day of November, 2019.

PARKER & McCONKIE

James W. McConkie

James W. McConkie  
*Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via electronic and U.S. mail, this 21<sup>st</sup> day of November, 2019, to the following:

Phyllis J. Vetter  
General Counsel and Vice President  
University of Utah  
201 South Presidents Circle, Room 309  
Salt Lake City, Utah 84112

Sean D. Reyes, Utah Attorney General  
Kyle D. Kaiser  
Darin B. Goff  
Rachael George Terry  
Assistant Utah Attorneys General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114

*James W. McConkie*

James W. McConkie  
*Attorney for Plaintiffs*